

REMARKS

In the Office Action, the Examiner states that the present Application contains claims directed toward patentably distinct species of a claimed invention and then refers to paragraphs 0004-0006 of Applicants specification (Office Action, page 2). Further, the Examiner then states that Applicants are required to elect a sub-species corresponding to either figure 1 or figure 3 of Applicants specification (Office Action, page 3). Applicants respectfully submit that the Examiner has not met the burden of establishing a *prima facie* restriction requirement in the present Application. For example, M.P.E.P. § 802.01 recites:

The term “distinct” means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER
....

(emphasis in original). Further, M.P.E.P. § 803 states: “Examiners must provide reasons and/or examples to support conclusions.” Moreover, M.P.E.P. § 803 states:

For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02.

(emphasis added). Additionally, M.P.E.P. § 808 recites:

Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct: and (B) the reasons for insisting upon restriction therebetween

(emphasis in original); *See also* M.P.E.P. § 816 (“The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate.”).

Applicants respectfully submit that the Examiner has provided none of the required showings or reasons to support a restriction requirement and, therefore, the Examiner has not established a *prima facie* case of a restriction requirement. For example, the Examiner

merely refers to different portions of Applicants' specification without providing any basis or reasoning as to why such portions of Applicants' specification are relevant to a restriction requirement. Accordingly, the Examiner has provided nothing more than a conclusion, which is improper. Therefore, for at least this reason, Applicants respectfully submit that such restriction requirement is improper and should be withdrawn.

Moreover, Applicants respectfully submit that an election of a sub-species as indicated by the Examiner based on either figure 1 or figure 3 of Applicants' specification is improper. For example, independent Claim 1 of the present Application recites:

An electronic circuit assembly test apparatus,
comprising:
 a support member having a plurality of probes, each
 probe adapted to contact a corresponding test area of an
 electronic circuit assembly; and
 a probe assembly coupled to the support member, the
 probe assembly having a plurality of probes, wherein a spacing
 density of the probes of the probe assembly is greater than a
 spacing density of the probes of the support member.

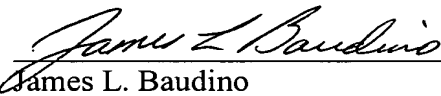
As discussed above, the Examiner has not provided any basis or reasoning as to why the Examiner believes that such a restriction based on figures 1 and 3 is required. Further, Applicants respectfully submit that the subject matter of the invention as defined by at least independent Claim 1 is supported by both figures 1 and 3 of the present Application. Therefore, for at least these reasons, Applicants respectfully submit that such a restriction requirement based on either figure 1 or figure 3 is unsupported and improper.

Pursuant to M.P.E.P. § 818.03, Applicants provisionally elect Claims 1-13, with traverse, for prosecution in the present Application and respectfully requests reconsideration and withdrawal of the restriction requirement at least for the reasons set forth above. Notwithstanding, Applicants expressly reserve the right to further prosecute Claims 14-27 in divisional applications.

CONCLUSION

No fee is believed due with this Response. If, however, Applicants have miscalculated or overlooked any fee due with this Response, the Commissioner is hereby authorized to charge any fees or credit any overpayment associated with this Response to Deposit Account No. 08-2025 of Hewlett-Packard Company.

Respectfully submitted,

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Date: July 1, 2005

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